

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

OCT 2009  
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ADEM  
AIR DIVISION

IN THE MATTER OF: )

Linde Gas North America, LLC )  
Air Facility ID No. 712-0072 )  
Decatur, Morgan County, Alabama )

CONSENT ORDER NO. 09-\_\_\_\_-CAP

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department") and Linde Gas North America, LLC (hereinafter, "the Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code, §§22-22A-1 through 22-22A-16, (2006 Rplc. Vol. ), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. The Permittee operates a chemical manufacturing plant, Air Division Facility No. 712-0072 (hereinafter, "the Facility"), located in Morgan County in Decatur, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code §§22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42

U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. On September 11, 2006, the Department issued Major Source Title V Operating Permit #712-0072 (hereinafter, "the Permit") to the Permittee, subject to certain conditions and requirements.

5. On June 24, 2009, the Department conducted an unannounced annual inspection of the Facility and reviewed the Permittee's air monitoring records at the Facility.

6. The Permittee's records indicated that for the dates of June 11, 2009 – June 12, 2009, the ammonia injection rate was below 1.2 lb ammonia per 100 lb of Adiponitrile Flasher Tails (AFT) burned.

7. Proviso 3 of the Emission Standards Section of the Permit states: "The ammonia injection rate for the SNCR shall be at least 1.2 lb/100 lb AFT burned."

8. The Permittee did not report the above deviation from the Permit conditions to the Department.

9. General Proviso 21(b) of the Permit states:

Deviations from permit requirements shall be reported within 48 hours or 2 working days of such deviations, including those attributable to upset conditions as defined in the permit. The report will include the probable cause of said deviations, and any corrective actions or preventive measures that were taken.

10. On July 28, 2009, the Department issued a Notice of Violation (NOV) for violations of Permit General Proviso 21(b) and Proviso 3 of the Emissions Standards Section of the Permit.

11. On August 26, 2009, the Department received a response from the Permittee to the July 28, 2009 NOV in which the Permittee identified additional incidents of unreported ammonia injection rates below the permitted limits on July 29, 2008 - July 30, 2008 and other potential violations on dates from May 31, 2008 to April 2, 2009 and instances in which the NOX emission rate was exceeded on April 10, 2007, August 7, 2007 and July 27, 2008.

12. These additional violations were not reported on Permittee's Annual Compliance Certifications to the extent that they occurred during the period covered by such certifications.

13. Therefore, as to the violations and the potential violations identified above, the Permittee certified in its Annual Compliance Certification that it was in compliance with the Permit, when in fact it was not in compliance.

14. The Permittee consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

15. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

### ***CONTENTIONS***

Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the

violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than one hundred dollars (\$100.00) or exceed twenty-five thousand dollars (\$25,000.00) for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed two hundred fifty thousand dollars (\$250,000.00). Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Department considers the Permittee's failure to comply with Best Available Control Technology limits of the Permit by not maintaining a sufficient supply of ammonia to be a serious issue. The Department also considers the Permittee's failure to properly report the deviations and submittal of an improper Annual Compliance Certification to be serious issues.

B. THE STANDARD OF CARE: The Department considers the Permittee to have demonstrated an insufficient standard of care for failing to meet the requirements of the Permit.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any significant economic benefit that the Permittee realized as a result of these violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Permittee has modified several of its operating procedures to increase its awareness of low ammonia levels in stock.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has no prior history of violations with the Department's Air Division.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

### ***ORDER***

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$12,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within

forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that upon the effective date of this Order it shall be in compliance with the requirements of the permit.

C. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violations and/or deviations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and

conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Facility which would constitute

possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an



existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

LINDE GAS NORTH AMERICA, LLC

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

Brian Forsyth  
(Signature of Authorized Representative)

Onis "Trey" Glenn, III  
Director

Brian Forsyth  
(Printed Name)

Plant Manager  
(Printed Title)

Oct 27 / 2009  
(Date Signed)

(Date Executed)